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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/753,886

01/07/2004

Spero Payton

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8164

25281 7590 02/05/2007

DICKE, BILLIG & CZAJA, P.L.L.C.

FIFTH STREET TOWERS

100 SOUTH FIFTH STREET, SUITE 2250

MINNEAPOLIS, MN 55402

EXAMINER

MCGOWAN, JAMIE LOUISE

ART UNIT

PAPER NUMBER

3671

MAIL DATE

DELIVERY MODE

02/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/753,886

Applicant(s)

PAYTON, SPERO

Examiner

Jamie L. McGowan

Art Unit

3671

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The applicants arguments filed 01/18/2007 have been considered but are not persuasive. With regards to Claim 17, the Examiner maintains that Brown discloses a flat front face. The Applicant's confirmation that "a flat front face" means the entirety of the front face is flat is not sufficient to put this application in condition for allowance because the claim itself does not clarify that a "flat front face" means the entirety of the face is flat.

Further, regarding claim 17, the Applicant argues that Shamblin and Carrillo are non-analogous art. The Examiner maintains that these references are analogous as they are both used to push unwanted material over a surface.

With regards to the argument that Shamblin and Carrillo could not be modified by Rank because Shamblin and Carrillo do not specifically teach plowing snow, the Examiner maintains that it would be obvious to modify Shamblin and Carrillo in view of Rank because they are similar structures performing similar functions, i.e. removing unwanted material from a surface. For example, a broom is usually used to sweep dirt from a floor, but many people also use a broom to sweep snow off of their cars. It is not a snow brush, but it is similar and can be used as one, just as a screed is similar to a snow shovel and could be used as one to remove snow from a surface.

With regards to the argument that Rank teaches that a bottom of the snow plowing blade should be formed of a resilient material, the Examiner has not suggested that the bottom edge of Shamblin and Carrillo be modified in that way and it is noted that not all snow shovels have a resilient bottom edge and therefore Shamblin and Carrillo do not need to be modified to have a resilient bottom edge.



Thomas B. Will
Supervisory Patent Examiner
Group 3600